

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

OCT 28 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

PAUL MONTTOYA TORRES, III,

Appellant.

2 CA-CR 2007-0387

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20070200

Honorable Stephen C. Villarreal, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Laura P. Chiasson

Tucson
Attorneys for Appellee

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Tucson
Attorneys for Appellant

E S P I N O S A, Judge.

¶1 After a jury trial, appellant Paul Montoya Torres was convicted of possession of a narcotic drug for sale and possession of drug paraphernalia. The trial court placed him on probation for concurrent, three-year terms. On appeal, Torres contends the court erred by denying his motion to suppress statements he made to Drug Enforcement Agency (DEA) agents and evidence discovered as a result of those statements. For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 “When reviewing a trial court’s denial of a motion to suppress, we review only the evidence presented at the hearing on the motion to suppress, and we view it in the light most favorable to sustaining the trial court’s ruling.” *State v. Gay*, 214 Ariz. 214, ¶ 4, 150 P.3d 787, 790 (App. 2007) (internal citation omitted). On August 24, 2006, a motel manager notified the DEA of suspicious activity at his motel. At approximately 11:30 a.m., DEA agents Carrie Morris and Paul Muzquiz arrived at the scene. The agents knocked on the door to one of two rooms identified by the manager. A female, later identified as Trisha Gasbarri, answered the door. After the agents identified themselves as “police officers,” Gasbarri allowed them to enter the room. The agents observed Torres emerge from the bathroom and again explained they were police officers responding to suspicious activity.

¶3 After obtaining consent from Torres to search the room, both Gasbarri and Torres sat on the bed while Morris conducted the search. Morris found a Ziploc bag containing a white, powdery substance later identified as cocaine at the bottom of a trash can

in the bathroom. Muzquiz placed Torres under arrest and another DEA agent, Derek Ress, arrived and read Torres the *Miranda*¹ warning. Torres was then asked whether he possessed anymore cocaine. Torres responded that more cocaine could be found in a truck outside, which he described. The agents searched the truck and found three “baggies” of cocaine, a black pocket knife, a black zip pouch, and two sandwich bags in its center console.

¶4 Torres was transported to the Tucson DEA District Office, where he signed a waiver of rights form and began writing a statement, but stopped after one sentence. Following a jury trial in September 2007, Torres was convicted and sentenced as outlined above, and this appeal followed.

Discussion

¶5 Before trial, Torres filed a motion to suppress his post-arrest statements and evidence seized from both the motel room and the truck. After a hearing, the trial court denied the motion. On appeal, Torres argues the court erred because the searches of the hotel room and truck were unconstitutional and his statements to the DEA agents had been obtained in violation of his constitutional rights as guaranteed under *Miranda*. We review the trial court’s decision “for abuse of discretion if it involves a discretionary issue, but review constitutional issues and purely legal issues de novo.” *State v. Booker*, 212 Ariz. 502, ¶ 10, 135 P.3d 57, 59 (App. 2006).

¹*Miranda v. Arizona*, 384 U.S. 436 (1966).

¶6 At the suppression hearing, Torres’s version of events differed significantly from Agent Muzquiz’s account, which the trial court expressly found more credible. “When there is a conflict between the testimony of the appellant and that of police officers, the resolution is for the trial court.” *State v. Tapia*, 159 Ariz. 284, 288, 767 P.2d 5, 9 (1988). Additionally, Muzquiz’s version of the facts best supports the trial court’s ruling, and we therefore review the evidence in that light. *See State v. Smith*, 197 Ariz. 333, ¶ 2, 4 P.3d 388, 390 (App. 1999).

The Hotel Search

¶7 Torres correctly points out that “[h]otel guests are entitled to full constitutional protection against unreasonable searches and seizures.” *See Stoner v. California*, 376 U.S. 483, 490 (1964); *see also State v. Hussain*, 189 Ariz. 336, 339, 942 P.2d 1168, 1171 (App. 1997). Torres contends the trial court erred in admitting evidence stemming from the search of the motel room because he did not consent to the search, “[h]e has maintained [a consistent story] throughout the case,” and his “version of the events makes sense.” Essentially, Torres asks this court to find his testimony the more credible. As noted above, however, it was for the trial court to resolve any conflicts in the testimony. *See Tapia*, 159 Ariz. at 288, 767 P.2d at 9. “[W]e do not impose our own determination as to the credibility of witnesses[,]” and “we will defer to the trial court’s assessment of witness credibility because [it] is in the best position to make that determination.” *State v. Olquin*, 216 Ariz. 250, ¶ 10, 165 P.3d 228, 230 (App. 2007) (internal citation omitted). The trial court did so

here and credited Muzquiz's version of the facts. We will not second-guess that determination.

¶8 Muzquiz testified Gasbarri opened the door to the motel room and the agents identified themselves and requested permission to enter, to which she consented. After Torres came out of the bathroom, the agents again explained why they were there, asked for permission to search the room, and Torres said "yes." Because a consensual search does not require a warrant, Torres's Fourth Amendment rights were not violated. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 243 (1973); *State v. King*, 140 Ariz. 602, 604, 684 P.2d 174, 176 (App. 1984).

¶9 Torres suggests the state was required to establish Gasbarri had "common authority over the premises" in order to find she could consent to the search. *See Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990). We need not address that issue, however, because the trial court accepted Muzquiz's testimony that Torres himself had consented to the agents' searching the room. Accordingly, the trial court did not abuse its discretion in denying Torres's motion to suppress.

Search of the Truck

¶10 Torres also maintains that the evidence obtained from the search of the truck was erroneously admitted because he did not consent to its search and there were no exigent circumstances justifying dispensing with a warrant.

¶11 An individual's vehicle is another personal area afforded constitutional protection. *See U.S. v. Arvizu*, 534 U.S. 266, 273 (2002); *State v. Reyna*, 205 Ariz. 374, ¶ 5, 71 P.3d 366, 367 (App. 2003). However, "[u]nder the 'automobile exception' to the Fourth Amendment warrant requirement," law enforcement officers can lawfully search a vehicle if probable cause exists to believe it contains contraband, "even in the absence of exigent circumstances." *Reyna*, 205 Ariz. at ¶ 1, 71 P.3d at 366, *citing U.S. v. Johns*, 469 U.S. 478, 484 (1985). Torres's admission that more drugs were in the truck provided the DEA agents with probable cause to search it. *See State v. Benge*, 110 Ariz. 473, 478, 520 P.2d 843, 848 (1974) ("[A]utomobiles . . . [can] be searched without a warrant . . . so long as the officers . . . had probable cause to believe . . . that they would find the instrumentality of a crime or evidence pertaining to a crime."); *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) ("If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more."); *State v. Hunt*, 118 Ariz. 431, 435, 577 P.2d 717, 721 (1978) (probable cause to search vehicle provided by suspicious behavior of occupants in area with high frequency of drug-related incidents); *see also State v. Durham*, 108 Ariz. 233, 235, 495 P.2d 463, 465 (1972) (defendant's admission of possession of a narcotic provided the officer with probable cause for an immediate arrest). Thus, we need not address Torres's argument that the trial court erred in finding he consented to the search of the truck.

Violation of Constitutional Rights under *Miranda*

¶12 Torres lastly argues the trial court erred in admitting his post-arrest statements because they were obtained in violation of his rights under *Miranda*. Torres claims he was not advised of his rights when he was questioned in the motel room and that he requested an attorney several times. As previously noted, the trial court found Muzquiz’s testimony more credible, and we review the evidence in that light. *See Tapia*, 159 Ariz. at 288, 767 P.2d at 9; *Olquin*, 216 Ariz. at ¶ 10, 165 P.3d at 230.

¶13 *Miranda* requires police officers to provide express warnings to suspects when they are in police custody in order to protect them from self-incrimination. *Miranda*, 384 U.S. at 478-79. “If the accused has been given his *Miranda* warnings and makes a voluntary, knowing, and intelligent waiver of those rights . . . statements [made to police officers] are admissible.” *State v. Smith*, 193 Ariz. 452, ¶ 29, 974 P.2d 431, 438 (1999) (*citing Patterson v. Illinois*, 487 U.S. 285, 292-94 (1988)). “When a suspect invokes his right to a lawyer, all questioning must cease.” *Id.* at ¶ 30, 974 P.2d at 438.

¶14 Upon discovering the bag of cocaine in the motel bathroom, the DEA agents immediately arrested Torres. Muzquiz testified he was present when Ress read the *Miranda* warning to Torres, who then voluntarily answered Muzquiz’s questions and provided information about the cocaine in the motel room and additional cocaine in the truck. Muzquiz further testified he did not recall Torres ever requesting an attorney or invoking his right to counsel. Because the trial court found Muzquiz’s description of events more

credible, we cannot say it abused its discretion in finding that Torres waived his rights and voluntarily spoke to Muzquiz.

Disposition

¶15 For the foregoing reasons, we uphold the trial court's denial of Torres's motion to suppress and affirm his convictions and sentences.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge